

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

WISCONSIN GAS LLC,

Plaintiff,

v.

Case No. 2:20-cv-1334

AMERICAN NATURAL RESOURCES
COMPANY and
HONEYWELL INTERNATIONAL INC.,

Defendants.

**STATEMENT OF PROPOSED, UNDISPUTED MATERIAL FACTS IN SUPPORT OF
DEFENDANT HONEYWELL INTERNATIONAL INC.'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56(b), Defendant Honeywell International Inc. (“Honeywell”) submits this statement of proposed material facts as to which Honeywell contends there is no genuine issue and that entitle Honeywell to judgment as a matter of law.

1. Coke is created by heating coal in a sealed chamber in the absence of oxygen.¹

RESPONSE:

2. In the 1800s, coke was typically produced in ovens where the impurities would burn off and be wasted.²

¹ See Declaration of Richard W. Galloway (“Galloway Decl.”), Exs. 9, 10 at HW_0001578; HW_0001584; HW_0015211.

² *Id.*

RESPONSE:

3. The Semet-Solvay Company (“Semet-Solvay”) was formed in 1895 to construct coke ovens using new, patented technology that captured impurities from coke production to create saleable byproducts from the coking process, including gas, tar, and ammonia.³

RESPONSE:

4. Semet-Solvay constructed and operated several facilities in the United States that produced both coke and associated byproducts.⁴

RESPONSE:

5. The Milwaukee Solvay Coke & Gas Superfund Site (the “Site”), located at 311 East Greenfield Avenue in Milwaukee, is an approximately 45-acre parcel of waterfront property just south of downtown Milwaukee, north of and adjacent to the Kinnickinnic River, and west of Lincoln Memorial Harbor at Lake Michigan.⁵

RESPONSE:

6. The northern portion of the Site operated as a coke and manufactured gas plant from approximately 1904 to 1983.⁶

RESPONSE:

³ *Id.*

⁴ Galloway Decl., Exh. 11 at HW_0015214.

⁵ Am. Compl., Dkt. # 25 at ¶¶ 1, 9; Declaration of J. Timothy Hobbs (“Hobbs Decl.”), Ex. 13 (EPA Enforcement Action Memo, HW_0011350, at HW_0011353).

⁶ Am. Compl., Dkt # 25 at ¶ 14; Hobbs Decl., Exhibit 1 (the “Arcadis Report”) at HW_0009412.

7. The Milwaukee Coke and Gas Company (“Coke Company”) owned the coke and gas plant at the Site from 1903 to 1962.⁷

RESPONSE:

8. Semet-Solvay Board of Directors meeting minutes from July 28, 1904 indicate that on March 9, 1903, Semet-Solvay signed a contract with the Coke Company to construct a series of coke ovens the Site.⁸

RESPONSE:

9. Semet-Solvay designed and constructed the coke and gas plant at the Site between 1903 and 1906.⁹

RESPONSE:

10. Neither the March 9, 1903 contract between the Coke Company and Semet-Solvay, nor a later contract dated June 19, 1905, have been located by any parties to this case.¹⁰

RESPONSE:

⁷ Am. Compl., Dkt # 25 at ¶¶ 26, 28, 33; Galloway Decl., Exh. 6 at WG-ANR-00046264.

⁸ Galloway Decl., Exhibit 6 at WG-ANR-00046267.

⁹ *Id.*, Exh. 6 at WG-ANR-00046264 - 00046299; *see also* Hobbs Decl., Exhs. 4 - 5 at ANRC-00010095; CMC HON 000071.

¹⁰ Hobbs Decl. at ¶ 4.

11. Under the March 9, 1903 contract between the Coke Company and Semet-Solvay, the parties contemplated that, after Semet-Solvay constructed the coke and gas plant, the Coke Company would take and sell the coke, while Semet-Solvay would take and sell the byproducts.¹¹

RESPONSE:

12. Semet-Solvay secured a contract with Milwaukee Gas Light to provide the utility with gas from the coking operation.¹²

RESPONSE:

13. Semet-Solvay completed construction of the first 40 coke ovens between 1903 and 1904, and these ovens commenced operation in April of 1904.¹³

RESPONSE:

14. The March 9, 1903 contract between the Coke Company and Semet-Solvay called for the construction of an additional 40 ovens (80 total) which Semet-Solvay completed by 1905.¹⁴

RESPONSE:

15. On June 19, 1905, Semet-Solvay and the Coke Company executed a new contract that contemplated a “Second Eighty Ovens.”¹⁵

RESPONSE:

¹¹ *Id.*, Exh. 11 at WG-ANR-00133530 - 00133531.

¹² *Id.*, Exh. 12 at WG-ANR-00133570 - 00133571.

¹³ *Id.*, Exhs. 4-5 at ANRC-00010095; CMC HON 000071.

¹⁴ Galloway Decl., Exh. 6 at WG-ANR-00046264 - 00046299

¹⁵ *Id.*, Exhs. 2, 6 at HW-0000101 - 0000102, WG-ANR-00046266.

16. Semet-Solvay drafted a 35-page document in approximately April or May of 1908 discussing relations between Semet-Solvay and the Coke Company and discussing various provisions of the June 19, 1905 contract between them (the “Early History Document”), a true and correct copy of which is attached to the Declaration of Richard Galloway as Exhibit 6.¹⁶

RESPONSE:

17. The Early History Document details Semet-Solvay’s issues with the Coke Company’s failure to use the type of coal specified in the contract, sloppy methods of coal storage and handling, changes to the facility, burning of byproduct gas to produce coke, and numerous other examples of inefficient and negligent operation of the facility, all of which reduced the amount of byproducts that Semet-Solvay expected from the arrangement.¹⁷

RESPONSE:

18. The Early History document indicates that the Coke Company “took over operation of the plant” in approximately May of 1906.¹⁸

RESPONSE:

¹⁶ *Id.*, Exh. 6. at WG-ANR-00046273 (referencing an accounting of a rebate through March 31, 1908, suggesting the document was authored after that date); WG-ANR-00046287 (referencing a “fire in May, 1906” and stating that regulators on the coke ovens “have not been restored practically two years after the fire,” suggesting the document was authored around May 1908).

¹⁷ *Id.*, Exh. 6 at WG-ANR-00046294 (referencing a quantity of light oil “lost by their [the Coke Company’s] negligence”); WG-ANR-00046294; WG-ANR-00046287; WG-ANR-00046288; WG-ANR-00046268; WG-ANR-00046282; WG-ANR-00046286; WG-ANR-00046294; WG-ANR-00046298.

¹⁸ *Id.*, Exh. 6 at WG-ANR-00046268, WG-ANR-00046270; WG-ANR-00046284; WG-ANR-00046270; WG-ANR-00046274; WG-ANR-00046276-77; WG-ANR-00046280; WG-ANR-00046281; WG-ANR-00046289.

19. Mr. Otto F. Greim was the superintendent of the coke and gas plant at the Site from 1904 to 1909, was the general manager of the plant in 1910, was an employee of the Coke Company from 1904 to 1910, and took direction from the President of the Coke Company during those years, Mr. Ferdinand Schlesinger.¹⁹

RESPONSE:

20. The Coke Company entered into a contract to supply a customer with coke produced from the new ovens to be constructed by Semet-Solvay commencing on January 1, 1906.²⁰

RESPONSE:

21. The Coke Company routinely rejected or ignored Semet-Solvay's recommendations about how to operate the coke and gas plant at the Site.²¹

RESPONSE:

22. The Coke Company was the ultimate decision maker at the Site.²²

RESPONSE:

¹⁹ *Id.*, Exh. 6 at WG-ANR-00046280; *see also* Hobbs Decl., Exh. 15 at HW_0003899; *id.*, Exh. 21 at HW_0003939.

²⁰ Galloway Decl., Exh. 2 at HW_0000107.

²¹ *Id.*, Exh. 6 at WG-ANR-00046294; WG-ANR-00046287; WG-ANR-00046288; WG-ANR-00046268.

²² *Id.*, Exh. 6 at WG-ANR-00046282; WG-ANR-00046286; WG-ANR-00046294; WG-ANR-00046298; WG-ANR-00046280.

23. Semet-Solvay performed an oversight role and attempted to improve operations at the Site, but found that the Coke Company employees would not follow through on its recommendations.²³

RESPONSE:

24. Semet-Solvay was frustrated with the Coke Company's negligent operation of the coke and gas plant at the Site.²⁴

RESPONSE:

25. In April of 1908 Semet-Solvay discussed a "plan for assuming control of the byproduct operation under Paragraph 6 of the contract" and voted to authorize the "taking of such steps as may be necessary to put the proposed plan into effect," but there is no indication that such a plan was executed or what it would have entailed.²⁵

RESPONSE:

26. In August of 1908 and months prior the Coke Company and Semet-Solvay negotiated a third contract that may have resolved some of the issues between them, but there is no indication from the record that a third contract was ever executed.²⁶

²³ *Id.* at WG-ANR-00046264-65; WG-ANR-00046298.

²⁴ Galloway Decl., Exhs 3-4 at HW_0001842-43; HW_0001844; HW_0001912-13; HW_0001920-22; HW_0001942.

²⁵ *Id.*, Exh. 5 at HW_UNREDACTED_0014549 to 0014550.

²⁶ *Id.*, Exh. 2 at HW_0000133; HW_0000137 to 0000138; HW_0000149 to HW_0000151; HW_0000154; HW_Exh. 6 at HW_UNREDACTED_0014413; *id.*, Exh. 5 at 0014554 (noting that a "proposed form of contract" was sent "to Mr. Schlesinger on August 5, 1908"). Compare *id.*, Exh. 2, at HW_0000102 to HW_0000103 (minutes reflect execution of 1905 contract). The proposed 1908 contract evidently contemplated Semet-Solvay taking Preferred Stock in the Coke Company in exchange for up to \$300,000 paid to the Coke Company. *Id.*, Ex. 2 at HW_0000154. No record has been located of Semet-Solvay holding stock in the Coke Company, further suggesting the 1908 contract was not executed.

RESPONSE:

27. Semet-Solvay's frustrations with the Coke Company's operation of the coke and gas plant at the Site persisted through 1915.²⁷

RESPONSE:

28. The Coke Company was required by the June 19, 1905 contract to "furnish all labor and material for said operation of the [coke and gas] plant" at the Site "and pay therefore."²⁸

RESPONSE:

29. Semet-Solvay complained about sustaining losses because the people operating the coke and gas plant at the Site were employees of the Coke Company and the Coke Company did not have a financial interest in the byproducts produced at the plant.²⁹

RESPONSE:

30. Semet-Solvay did not have authority to direct the employees of the Coke Company who were operating the coke and gas plant at the Site.³⁰

RESPONSE:

²⁷ *Id.*, Exh. 3 at HW_0001897 ("Both companies agree to cancel all claims against each other.").

²⁸ *Id.*, Exh. 6 at WG-ANR-00046277.

²⁹ *Id.*, Exh. 6 at WG-ANR-00046290.

³⁰ *Id.*, Exh. 6 at WG-ANR-00046280; WG-ANR-00046290.

31. Historical records from the State of Wisconsin Bureau of Labor and Industrial Statistics do not list Semet-Solvay as an employer in Wisconsin after 1906.³¹

RESPONSE:

32. Historical records from the State of Wisconsin Bureau of Labor and Industrial Statistics show that the Coke Company had hundreds of employees in Wisconsin from 1905 through 1910.³²

RESPONSE:

33. The Coke Company made decisions about compliance with environmental laws at the Site.³³

RESPONSE:

34. The City of Milwaukee filed a nuisance lawsuit against the Coke Company in 1912 for air pollution which led to pollution abatement measures implemented by the Coke Company, and neither the City nor the Coke Company asserted claims against Semet-Solvay.³⁴

RESPONSE:

³¹ See generally Hobbs Decl. Exhs. 7-9.

³² *Id.*; see *id.*, Exh. 9 at HW_0010882-83.

³³ Hobbs Decl., Exhs. 3, 6, 10 at HW_0002059; HW_0002034 – 2071; HW_0010939; RI/FS [Arcadis, U.S., Inc. 2016 (Appendix B, Attachment C).

³⁴ Hobbs Decl., Exh. 6 at HW_0002059; HW_0002034 – 2071.

35. An investigation in 1913 commissioned by the Milwaukee Commissioner of Health concluded that “the plant of the Milwaukee Coke and Gas Company, as it was operated at the time [of] this investigation, was made, undeniably constituted a public nuisance.”³⁵

RESPONSE:

36. In response to the 1913 investigation by the Milwaukee Commissioner of Public Health, the Coke Company subsequently adopted “such measures as were practicable to abate the nuisance.”³⁶

RESPONSE:

37. Semet-Solvay was not mentioned in connection with the 1913 investigation by the Milwaukee Commissioner of Public Health or the remedy.³⁷

RESPONSE:

38. An investigation from 1918-1920 identified the Coke Company as a source of pollution to the City of Milwaukee’s water supply, and the Coke Company undertook “an extensive experimental program” to treat waste from the plant to improve water quality.³⁸

RESPONSE:

³⁵ *Id.*, Exh. 10 at HW_0010939.

³⁶ *Id.*, Exh. 10 at HW_0010940.

³⁷ *Id.*

³⁸ *Id.*, Exh. 2 (RI/FS, Arcadis, U.S., Inc. 2016 (Appendix B, Attachment C)).

39. Semet-Solvay was not mentioned in connection with the 1918-1920 investigation of sources of pollution of the City of Milwaukee's water supply or the remedy.³⁹

RESPONSE:

40. In 1915, Semet-Solvay invoked a provision in its contract with the Coke Company whereby Semet-Solvay relinquished its rights to receive the byproducts in exchange for receiving 10% of the proceeds that the Coke Company could realize from selling the byproducts.⁴⁰

RESPONSE:

41. After July 1, 2015, there is no mention of the Site in the meeting minutes of the Semet-Solvay Board of Directors or Executive Committee.⁴¹

RESPONSE:

42. In 1921, Semet-Solvay ceased doing business in Wisconsin.⁴²

RESPONSE:

³⁹ *Id.*

⁴⁰ Galloway Decl., Exh. 5 at HW_UNREDACTED_0014745; Exh. 2 at HW0000320.

⁴¹ *Id.*, Exhs. 2, 3, 5.

⁴² Hobbs Decl., Ex. 22 at HW_0000666 to 0000667 (Board of Director's decision in April 1921 to cancel license to do business in Wisconsin).

43. The United States Environmental Protection Agency (“U.S. EPA”) performed initial investigative work at the Site in 2001 and 2002 and identified various contaminants based on historic operations.⁴³

RESPONSE:

44. On March 30, 2006, EPA sent a CERCLA Special Notice Letter to an expanded group of companies it then considered potentially responsible parties (“PRPs”) for further work at the Site, including Wisconsin Gas and its affiliate Wisconsin Electric Power Company, as well as American Natural Resources Company, Maxus Energy Corporation, and others.⁴⁴

RESPONSE:

45. Honeywell was not named as a PRP in the March 30, 2006 CERCLA Special Notice Letter.⁴⁵

RESPONSE:

46. In 2016, EPA sent Honeywell a letter asserting that it identified Honeywell as a PRP at the Site.⁴⁶

RESPONSE:

⁴³ Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study, U.S. EPA Region 5, Docket No. V-W-07-C-861, Jan. 31, 2007 (“RI/FS ASAOC”), at 5 ¶ 13, publicly available at <https://semspub.epa.gov/work/05/269627.pdf>).

⁴⁴ Hobbs Decl., Exh. 14.

⁴⁵ *Id.*

⁴⁶ *Id.*, Exh. 7.

47. Honeywell responded to the EPA's 2016 letter, denied liability, and EPA did not further pursue the matter.⁴⁷

RESPONSE:

48. Wisconsin Gas acquired the site in 2017, performed further response actions, and pursued PRPs for contribution.⁴⁸

RESPONSE:

⁴⁷ *Id.*, Exh. 8, ¶ 11.

⁴⁸ Am. Compl., Dkt. # 25, at ¶¶ 68, 70-99.

Respectfully submitted,

Dated: May 19, 2023

/s/ J. Timothy Hobbs
J. Timothy Hobbs
Savannah Darnall
K&L Gates LLP
501 Commerce Street, Suite 1500
Nashville, TN 37205
(615) 514-1811
Tim.Hobbs@klgates.com
Savannah.Darnall@klgates.com

Ankur K. Tohan
K&L Gates LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104
(206) 370-7658
Ankur.Tohan@klgates.com

CERTIFICATE OF SERVICE

I hereby certify that, on this May 19, 2023, a true and correct copy of the foregoing has been furnished, via United States Mail, first-class postage prepaid, and electronic mail, to:

James E Goldschmidt
Quarles & Brady LLP
411 E Wisconsin Ave – Ste 2400
Milwaukee, WI 53202
James.goldschmidt@quarles.com

James F Thompson
Mitch F Engel
Shook Hardy & Bacon LLP
2555 Grand Blvd
Kansas City, MO 64108
jfthompson@shb.com
mengel@shb.com

Matthew Kennison
Joseph A Cancila Jr.
Riley Safer Holmes & Cancila LLP
121 W Washington – Ste 402
Ann Arbor, MI 48104
mkenison@rshc-law.com
jcancila@rshc-law.com

/s/ J. Timothy Hobbs

J. Timothy Hobbs